

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COCHISE B. LEE,

Petitioner,

v.

G.D. LEWIS, Warden,

Respondent.

NO. CV 13-7725-VAP (AGR)

ORDER ACCEPTING IN PART
REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed Petitioner's motion for a *Kelly* or *Rhines* stay (Dkt. No. 25); the previously-assigned Magistrate Judge's July 14, 2015 Order (Dkt. No. 30) denying the stay motion; the newly-assigned Magistrate Judge's October 29, 2015 Order (Dkt. No. 35) construing the denial order as a Report And Recommendation in light of two intervening Ninth Circuit rulings that restrict the authority of Magistrate Judges to rule on stay motions; and Petitioner's November 16, 2015 Objections to the Report. (Dkt. No. 36.)

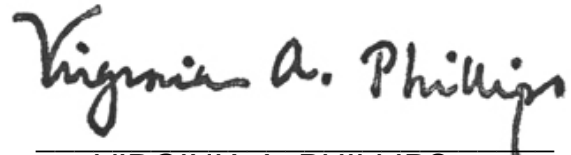
The Court accepts in part the findings and recommendations of the Magistrate Judge. The Court agrees with the Magistrate Judge that Petitioner fails to show the required "good cause" for a *Rhines* stay. *Rhines v. Weber*, 544 U.S. 269, 277 (2005).

1 However, the Court concludes that a *Kelly* stay is available. *Kelly v. Small*,
 2 315 F.3d 1063 (9th Cir. 2002). “*Rhines* applies to stays of *mixed* petitions,
 3 whereas the three-step procedure [in *Kelly*] applies to stays of *fully exhausted*
 4 petitions.” *King v. Ryan*, 564 F.3d 1133, 1140 (9th Cir. 2009) (emphasis in
 5 original) (citation omitted). Petitioner does not seek to exhaust any new claims
 6 but instead wishes to exhaust additional evidentiary support, in the form of
 7 affidavits, for Ground One. Ordinarily, a petitioner seeking a *Kelly* stay has a
 8 mixed petition and must initially file a fully exhausted “placeholder” petition
 9 omitting any unexhausted claims. Because the current petition in this case is fully
 10 exhausted, the first step is unnecessary.

11 IT IS ORDERED that Petitioner's motion for a stay is GRANTED IN PART
 12 AND DENIED IN PART, subject to the following terms and conditions:

- 13 1. Petitioner shall file a habeas petition before the California Supreme
 14 Court that exhausts any unexhausted allegations within 30 days after
 15 entry of an order accepting this recommendation;
- 16 2. Petitioner shall file a status report in this court within 30 days after
 17 filing the petition in California Supreme Court. The status report shall
 18 notify this court of the case number assigned by the state court; and
- 19 3. Petitioner shall file a status report within 10 days after he receives a
 20 copy of the California Supreme Court's decision on his petition.

21
 22
 23 DATED: March 31, 2016_____


 VIRGINIA A. PHILLIPS
 United States District Judge